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**E-FILED on October 20, 2006**

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11 Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

12 In re:  
 13 USA COMMERCIAL MORTGAGE COMPANY,  
 14 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

15 In re:  
 16 USA CAPITAL REALTY ADVISORS, LLC,  
 17 Debtor.

Chapter 11  
 Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

18 In re:  
 19 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 20 Debtor.

21 In re:  
 22 USA CAPITAL FIRST TRUST DEED FUND,  
 LLC,  
 23 Debtor.

**DEBTORS' OPPOSITION TO  
 MOTION TO ENFORCE ORDER  
 GRANTING DEBTORS' MOTION TO  
 DISTRIBUTE FUNDS**

**(AFFECTS ALL DEBTORS)**

24 Affects:  
 25  All Debtors  
 USA Commercial Mortgage Company  
 USA Securities, LLC  
 USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
 USA Capital First Trust Deed Fund, LLC

Date: November 13, 2006  
 Time: 9:30 a.m.

26  
 27  
 28

1 USA Commercial Mortgage Company (“USACM”), USA Capital Diversified Trust Deed  
 2 Fund, LLC (“Diversified Fund”), USA Capital First Trust Deed Fund, LLC (“FTD Fund”), USA  
 3 Capital Realty Advisors, LLC (“Realty Advisors”), and USA Securities, LLC (“USA Securities”)  
 4 (collectively, the “Debtors”), respectfully submit this Opposition to Motion to Enforce Order  
 5 Granting Debtors’ Motion to Distribute Funds.

6 **STATEMENT OF FACTS**

7 1. On April 13, 2006 (the “Petition Date”), Debtors filed petitions for relief under chapter 11  
 8 of the Bankruptcy Code. By order entered June 9, 2006, the Court approved the joint  
 9 administration of the Debtors’ bankruptcy cases.

10 2. On July 7, 2006, Debtors filed their Motion to Distribute Funds and to Grant Ordinary-  
 11 Course Releases and Distribute Proceeds (the “Distribution Motion”) (**Docket No. 847**).

12 3. On August 24, 2006, the Court entered an order approving the Distribution Motion (the  
 13 “Distribution Order”) (**Docket No. 1184**).

14 4. On September 27, 2006, USA Commercial Real Estate Group, Inc. (“USA Real Estate”),  
 15 filed a Motion to Enforce Order Granting Debtors’ Motion to Distribute Funds (the “Enforcement  
 16 Motion”) (**Docket No. 1388**), in which USA Real Estate requests that the Court order the Debtors  
 17 to distribute \$17,578.84 which USA Real Estate claims the Debtors are holding on its behalf  
 18 pursuant the Distribution Order.

19 5. The corporate records for the State of Nevada indicate that Joseph D. Milanowski and  
 20 Thomas A. Hantges are officers of USA Real Estate, and the Debtors also believe these two  
 21 individuals are shareholders in USA Real Estate. A copy of the printout from the Secretary of  
 22 State’s website is attached hereto as **Exhibit “A.”**

23 **ARGUMENT**

24 USA Real Estate is seeking the entry of an order requiring the Debtors to distribute  
 25 \$17,578.84 to USA Real Estate pursuant to the Distribution Order. However, the Debtors have  
 26 not made any distributions to USA Real Estate because the corporate records for the State of  
 27 Nevada indicate that Milanowski and Hantges are officers of USA Real Estate and the Debtors  
 28 also believe they are shareholders in USA Real Estate. As this Court is aware, Hantges and

1 Milanowski were officers of the Debtors, were extensively involved in the Debtors pre-petition  
 2 management, and since their removal it has been discovered that there were significant pre-  
 3 petition irregularities that occurred in the Debtors' pre-petition management. Accordingly, the  
 4 Debtors have claims against Milanowski, Hantges and other companies with which these two  
 5 individuals are affiliated. Given these claims, Debtors believe it is inappropriate to distribute  
 6 funds to USA Real Estate when the possibility exists that the Debtors may have offset rights  
 7 against any funds it is holding for the benefit of USA Real Estate based on the claims it holds  
 8 against Hantges, Milanowski and their affiliates. At the very least, given the circumstances that  
 9 caused these jointly administered cases to be filed, Debtors' current management is not  
 10 comfortable in distributing funds to an entity that is managed (and possibly owned) by Hantges  
 11 and Milanowski absent further order of the Court.

12       Generally, the Bankruptcy Code provides for pro rata distribution to creditors with equal  
 13 priority. However, the Code does provide for setoffs relating to claims. See, Bankruptcy Code  
 14 §502(b). A debtor-in-possession is being conservative by postponing payment until investigation  
 15 of transactions between the Debtors and entities controlled and owned by Hantges and Milanowski  
 16 and, if applicable, a final adjudication of inter-company liability. In the cases of these Debtors,  
 17 there is a question about the nature and validity of all transactions between the Debtors and entities  
 18 owned and controlled by Hantges and Milanowski.<sup>1</sup>

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25

26       <sup>1</sup> The Court has entered, on July 24, 2006, an order approving the security agreement and related  
 27 promissory note recently given by USA Investment Partners, LLC ("Investment Partners"),  
 28 another entity controlled by Hantges and Milanowski, to document a \$58.3 million obligation  
 owed by Investment Partners to the Debtors and to provide collateral for that obligation (and other  
 obligations owed by Investment Partners).

## **CONCLUSION**

Based on the foregoing, the Debtors respectfully request that the Court deny the Enforcement Motion, at this time.

Respectfully submitted this 20<sup>th</sup> day of October, 2006.

/s/ Lenard E. Schwartzer  
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## **CERTIFICATE OF SERVICE**

1. On October 20, 2006, I served the following document(s):

**a. DEBTORS' OPPOSITION TO MOTION TO ENFORCE ORDER GRANTING  
DEBTORS' MOTION TO DISTRIBUTE FUNDS**

2. I served the above-named document(s) by the following means to the persons as listed below:

a. By ECF System:

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SIGI SUE BIRMINGHAM, *Archaeological Record*, 1, 1991.

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12  b. **By United States mail, postage fully prepaid:**

13  c. **By Personal Service**

14 I personally delivered the document(s) to the persons at these addresses:  
15  For a party represented by an attorney, delivery was made by handing the  
16 document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or  
17 other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place  
in the office.

18  For a party, delivery was made by handing the document(s) to the party or by  
19 leaving the document(s) at the person's dwelling house or usual place of abode with someone of  
suitable age and discretion residing there.

20  d. **By direct email (as opposed to through the ECF System)**

21 Based upon the written agreement to accept service by email or a court order, I  
22 caused the document(s) to be sent to the persons at the email addresses listed below. I did not  
receive, within a reasonable time after the transmission, any electronic message or other indication  
that the transmission was unsuccessful.

23  e. **By fax transmission**

24 I faxed the document(s) to the persons at the fax numbers listed below. No error  
25 was reported by the fax machine that I used.

26 Jeff Sylvester, Esq. FAX NO.: (702) 952-5205  
27  
28

1          f.      **By messenger**

2      I served the document(s) by placing them in an envelope or package addressed to  
the persons at the addresses listed below and providing them to a messenger for service.

3      **I declare under penalty of perjury that the foregoing is true and correct.**

4      Signed on:    October 20, 2006

5      LIA DORSEY  
6      (Name of Declarant)

/s/      LIA DORSEY  
(Signature of Declarant)

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# **EXHIBIT “A”**

# USA COMMERCIAL REAL ESTATE GROUP

## Business Entity Information

Status:	Active	File Date:	8/25/1987
Type:	Domestic Corporation	Corp Number:	C6561-1987
Qualifying State:	NV	List of Officers Due:	8/31/2007
Managed By:		Expiration Date:	

## Resident Agent Information

Name:	VICTORIA S LOOB	Address 1:	4525 SANDHILL ROAD
Address 2:	STE 114	City:	LAS VEGAS
State:	NV	Zip Code:	89121
Phone:		Fax:	
Email:		Mailing Address 1:	
Mailing Address 2:		Mailing City:	
Mailing State:		Mailing Zip Code:	

## Financial Information

No Par Share Count:	2,500.00	Capital Amount:	\$ 0
<b>No stock records found for this company</b>			

## Officers

**Include Inactive Officers**

<b>President - THOMAS A HANTGES</b>	
Address 1:	4525 S SANDHILL #114
City:	LAS VEGAS
Zip Code:	89122
Status:	Active
<b>Secretary - THOMAS A HANTGES</b>	
Address 1:	4525 S SANDHILL #114
City:	LAS VEGAS
Zip Code:	89122
Status:	Active
<b>Treasurer - JOSEPH D MILANOWSKI</b>	
Address 1:	4525 S SANDHILL #114
City:	LAS VEGAS
Zip Code:	89122
Status:	Active

## Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	C6561-1987-001	# of Pages:	6
File Date:	08/25/1987	Effective Date:	
(No Notes for this action)			
Action Type:	Resident Agent Change		
Document Number:	C6561-1987-003	# of Pages:	1
File Date:	09/18/1987	Effective Date:	
<b>ALEX G. GASSIOT</b>			
<b>39 PARADISE RD LAS VEGAS NV 89109</b>			
Action Type:	Amendment		
Document Number:	C6561-1987-004	# of Pages:	1

## Corporation Details - Secretary of State, Nevada

Page 2 of 2

File Date:	06/20/1988	Effective Date:
<b>1988-1989 LIST OF OFFICERS RETURNED BY P.O.</b>		
Action Type:	Resident Agent Change	
Document Number:	C6561-1987-005	# of Pages: 1
File Date:	09/03/1991	Effective Date:
<b>ALEX G. GASSIOT</b>		
<b>3900 PARADISE RD LAS VEGAS NV 89109 F B</b>		
Action Type:	Resident Agent Change	
Document Number:	C6561-1987-006	# of Pages: 1
File Date:	04/06/2000	Effective Date:
<b>THOMAS A. HANTGES SUITE 263</b>		
<b>3900 PARADISE ROAD LAS VEGAS NV 89109 MXL</b>		
Action Type:	Annual List	
Document Number:	C6561-1987-008	# of Pages: 1
File Date:	07/16/2001	Effective Date:
(No Notes for this action)		
Action Type:	Annual List	
Document Number:	C6561-1987-007	# of Pages: 1
File Date:	08/25/2003	Effective Date:
(No Notes for this action)		
Action Type:	Annual List	
Document Number:	C6561-1987-002	# of Pages: 1
File Date:	09/20/2004	Effective Date:
<b>List of Officers for 2004 to 2005</b>		
Action Type:	Annual List	
Document Number:	20050376057-45	# of Pages: 1
File Date:	08/19/2005	Effective Date:
(No Notes for this action)		
Action Type:	Annual List	
Document Number:	20060531165-79	# of Pages: 1
File Date:	08/18/2006	Effective Date:
(No Notes for this action)		
Action Type:	Resident Agent Change	
Document Number:	20060573047-24	# of Pages: 1
File Date:	09/05/2006	Effective Date:
(No Notes for this action)		